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Via Electronic Submission

Mr. Joe Hurd
Senior Director, Trade Promotion Coordinating Committee
U.S. Department of Commerce
1401 Constitution Avenue, NW
Washington, D.C. 20230

RE: Request for Public Comment to Inform Development of National Export Initiative Plan, Docket Number 100624279-0279-01

Dear Mr. Hurd:

True Religion Brand Jeans (“True Religion”) commends the Obama Administration for its National Export Initiative (“NEI”). As a domestic manufacturer of high quality denim products, True Religion supports the NEI’s goal of doubling U.S. exports of goods and services over the next five years as an essential element of long-term job creation in the United States. True Religion welcomes the opportunity to share its experience with the interagency Trade Promotion Coordinating Committee (“TPCC”) as a small to medium sized business that is embarking on substantially expanding into overseas markets.

I. Background on True Religion

True Religion is an American success story. Started in 2002 with the explicit intention of making quality, timeless, authentic American denim products, it has shown a commitment to sourcing materials and manufacturing domestically. It is one of the few American apparel manufacturers that is still predominately based in the United States and is the source of 3,500 jobs in California alone.

True Religion’s premium clothing line is headquartered in the greater Los Angeles area. All of True Religion’s American-made adult denim products are manufactured in Los Angeles. Furthermore, True Religion sources much of its raw materials from the United States. True Religion maintains several other manufacturing operations in Los Angeles for its t-shirts and fleece products, and additional licensed product categories, such as swimwear, and fragrance, are

also predominantly made in the U.S. True Religion has more than 80 company-owned stores across the United States and also sells domestically to other major department and specialty stores. In addition, True Religion currently operates several company-owned and licensed stores around the world, sells to numerous international retailers and has robust international expansion plans.

II. Lack of IP Enforcement as a Non-Tariff Barrier to Trade

True Religion's international expansion has met unexpected deterrents which also threaten its domestic business. Without strong action and consistent policies from the U.S. Government, True Religion and other small and medium size enterprises will struggle to compete at home and abroad. In particular, True Religion has faced the paradox of Chinese intellectual property rights enforcement. Intellectual property rights infringement is rampant in China; despite a well developed system of laws on the books, enforcement continues to be sporadic and inconsistent. Indeed, Chinese policies unfairly disadvantage U.S. intellectual property right holders. In True Religion's case, this has not only affected sales to China, but the welfare of the True Religion brand worldwide.

Chinese Trademark Applications

True Religion first applied in 2005 for a Class 25 (clothing and apparel) trademark in China. The initial filing by True Religion was for defensive purposes. Even in 2005, counterfeit True Religion products were being exported from China to the U.S. Subsequently, True Religion filed several additional trademark applications in China, expanding its coverage for apparel products and adding other product categories, such as fragrance, eyewear, and leather goods. True Religion seeks Chinese trademark registrations in order to protect its brand in markets around the world from Chinese counterfeiting and misappropriation. Moreover under Chinese law, trademark registration is required to even begin to enforce a company's intellectual property rights.

To date, however, all of True Religion's applications have been denied. Chinese authorities have denied trademark protection based solely on Article 10(8) of the Chinese Trademark Law, which states that trademark protection cannot be granted to marks that are "detrimental to socialist morality or customs." The relevant authorities' explanations have ranged from the suggestion that the smiling Buddha image (seen above) would offend Buddhists because it is anathema to the "seriousness" of the religion, to the implication that the design coupled with the words "True Religion" suggests that Buddhism is the one "true belief," which would offend people of other faiths. Recently, Chinese authorities have also rejected two applications for marks containing only the words "True Religion" and "True Religion Brand Jeans," even though the image of the smiling Buddha was not included.

The decisions of the Chinese authorities are troubling, particularly the two recent decisions. No previous rejections suggested that the words "True Religion" by themselves were problematic. Furthermore, in the past China has had no problems granting trademark protection to Chinese applicants with similar marks that contain images of Buddhist monks and religion-related words.

Effect of Denial

True Religion has exhausted the appeals of the rejection of its True Religion “with device” and “device only” trademark applications. The rejection of True Religion’s trademark applications for word marks is currently under administrative review by China’s Trademark Review and Adjudication Board (TRAB). While True Religion continues to challenge the denial of trademark applications in appellate proceedings and file new applications for word marks, counterfeit products pour out of China at an alarming rate.

Encouraged by True Religion’s growing global success, counterfeit jeans, t-shirts, hoodies, knit pants, handbags and other products are manufactured and sold at wholesale and retail throughout China, as well as exported to key True Religion markets, including, but not limited to, the Republic of Korea, Japan, Taiwan, Thailand, Hong Kong, Australia, Germany, United Kingdom, Belgium, Brazil, Mexico, Canada, and the United States. The counterfeit trade thrives due to the immense profitability to the counterfeiters. In 2009, True Religion estimates that approximately 434,000 units of Chinese-made counterfeit products were seized or recovered due to the extensive worldwide enforcement programs managed and funded by True Religion. Yet such efforts are not enough as the counterfeit products continue to directly undermine True Religion’s potential sales and devalue the True Religion brand abroad.

Nevertheless, True Religion has undertaken aggressive action to try to stem the flow of counterfeiting. True Religion works closely with U.S. Customs and Border Patrol, domestic and international investigators, law enforcement agencies and Customs offices to help identify and stop the flow of counterfeit products. The enforcement costs borne by True Religion are steep and the quantities recovered represent only a small percentage of the counterfeit products being exported from China. Further, this enforcement is largely futile if True Religion is barred from addressing the problem at its source.

Without a registered Chinese trademark as proof of intellectual property rights, the Chinese Government will not conduct raids of wholesale markets or retailers. Similarly, the Chinese customs service will not take action against counterfeit exports unless the mark at issue is registered in China and recorded with PRC Customs. In short, the Chinese Government has put True Religion in a “Catch-22” in that China will not take action against counterfeits unless True Religion first registers its marks, and yet China is refusing to register True Religion’s marks.

III. Additional National Export Initiative Priorities

True Religion believes that it is essential for the United States to work with our trading partners to reduce and eliminate non-tariff barriers to trade such as those described above. Furthermore, the United States must prioritize supporting small and medium sized enterprises by providing consistent advocacy, appropriate resources and a level playing field abroad. Promotion, advocacy and support will pave the way to increased U.S. exports and additional U.S. jobs.

Small and Medium Sized Enterprises Export Prospects

The financial and reputational harm to True Religion due to Chinese counterfeits is difficult to quantify. Not only is the company required to expend considerable resources to remove counterfeit products from the stream of commerce on a worldwide basis, but there are immeasurable lost sales as well. Counterfeits sold in the Republic of Korea, Japan, Taiwan, Thailand, Germany, United Kingdom, Belgium, Brazil, Canada, and the United States replace potential sales of genuine True Religion products.

Fraudulent products not only reduce overall U.S. production and sales, but create a false economy of counterfeit goods. Counterfeit goods become a profit source not only for the manufacturer, but for wholesalers, distributors and retailers who participate in a profitable secondary economy, from which U.S. businesses are barred. Without trademark protection, legitimate True Religion products cannot compete in the Chinese market, putting one of the largest and fastest growing consumer markets firmly out of reach.

As True Religion's case illustrates, small and medium sized American enterprises are disproportionately impacted by China's unpredictable regulatory environment. For instance in China, small companies often do not have the resources to identify regulatory traps or navigate Chinese enforcement mechanisms. Small U.S. entities must also be aware of systematic narrowing of market access due to an increasingly discriminatory and protectionist regulatory environment which strongly favors Chinese enterprises. Faced with outright and potentially systemic discrimination in China, a generation of growing American firms face severe disadvantages not only in the Chinese market, but domestically in the U.S. and throughout the world.

Availability of Commercial Advocacy

Additionally, as a small and medium sized company beginning its expansion overseas, True Religion lacks the resources to police the entire world for Chinese-made counterfeits. Nor, does it have the economic backing or political clout to truly engage the Chinese government regarding the discriminatory application of Chinese law. Growing companies generally lack the resources to lobby the Chinese government to comply with its own laws and regulations. This places them at a severe disadvantage in the export market.

It is therefore essential that the U.S. Government not only seek elimination of non-tariff barriers to trade and support the development of U.S. small and medium sized enterprises, but also establish means of advocating for these small U.S. exporters. In True Religion's experience, the ability to enforce intellectual property rights on the ground in China is essential to effectively address counterfeiting problems and support expansion of export potential worldwide. True Religion, therefore, supports expanding U.S. commercial resources and advocacy for American businesses overseas.

IV. Conclusion

In order to double exports and create several million new jobs in the next five years, a strong and consistent policy for supporting American industry is required. The National Export

Initiative provides an excellent strategy for supporting U.S. economic growth. True Religion appreciates the opportunity to provide public comments on this important initiative and hopes to working with the TPCC to provide an even playing field and positive environment for U.S. companies expanding abroad.

Sincerely,



Deborah Greaves